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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.G., a Person Coming Under the Juvenile Court Law.	B210442 (Los Angeles County Super. Ct. No. CK70187)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Kirstin J. Andreasen, Associate County Counsel.

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C.G. (father) appeals from the juvenile court's order entered at the six-month review hearing terminating reunification services with his son and daughter. Father contends that he was entitled to another six months of services and that the case plan was inadequate while he was incarcerated. We affirm the order and dismiss the appeal as to the daughter over whom juvenile court jurisdiction has been terminated.

FACTUAL AND PROCEDURAL BACKGROUND

Thirteen-year-old A.G. (A.G.1) and his nine-year-old sister A.G. (A.G.2) first came to the attention of the Los Angeles County Department of Children and Family Services (the department) on September 27, 2007, after their mother, R.P. (mother), disclosed to her therapist that father was stalking her and threatening to kill her and that he was an alcoholic who was using methamphetamine. Mother developed a safety plan with the police for her and the minors to remain out of the family home, but contrary to the plan mother returned to the home with the minors. On October 3, 2007, the department filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b),[1] on behalf of A.G.1 and A.G.2, alleging that father and mother had a history of ongoing domestic violence; father had threatened to kill mother, who had failed to protect the children by allowing father to reside with them; and father had a history of illicit drug and alcohol abuse and was a current abuser of alcohol and methamphetamine. The minors were placed in foster care.

At the detention hearing, the court ordered that the minors be detained from their parents, visits were to be monitored, the department had discretion to release the minors to mother if she did not reside with father, and the department was to provide the parents with family reunification services. The court informed the parents that if it later ordered them to participate in programs to regain custody and the parents failed to make substantial progress in the programs within 12 months, the court could order a permanent

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[1] All statutory references shall be to the Welfare and Institutions Code, unless otherwise noted.

plan of long-term foster care, legal guardianship or adoption, and that "[a]nother choice is that at some point I could release to one parent and even close the case with a custody order giving one parent custody and limiting the other parent's rights."

On October 15, 2007, the juvenile court issued a temporary restraining order against father, ordering him to stay 100 yards away from both mother and the minors and that his visits with the minors be monitored.

On October 19, 2007, father went to the family home with a knife and attempted to kill mother. He stabbed her in the chest and upper arm; when he lunged at her again, mother grabbed the knife and cut her hand. Mother was hospitalized for three days. Father fled the scene, but was later arrested. When the social worker interviewed him in jail, father admitted stabbing mother and that he went to the house with the intent to kill her. On November 2, 2007, the department filed an amended petition adding allegations that father violated the restraining order and stabbed mother. Based on A.G.2's statement to the social worker that she did not want any further contact with father after what he had done to mother, the court ordered no contact between father and A.G.2.

At the jurisdiction hearing on November 13, 2007, father was present in custody pending criminal charges. The court sustained the amended petition and issued a permanent restraining order against father until November 13, 2010 on the same terms and conditions as the prior restraining order. Father was also present in custody at the contested disposition hearing on December 14, 2007. The court ordered both parents to participate in a parent education class, domestic violence counseling and individual counseling, and also ordered father to participate in an alcohol and drug rehabilitation program with weekly and on-demand testing. Father's visits with A.G.1 were to remain monitored.

For the March 4, 2008 progress hearing, the department reported that mother was in compliance with her disposition case plan and was consistently visiting the minors. Father was still in custody at the Men's Central Jail on charges of attempted murder and spousal abuse. The court granted mother unsupervised day visits with the minors and

gave the department discretion to allow overnight visits. The court set a six-month review hearing pursuant to section 366.21, subdivision (e), for June 2, 2008.

The department subsequently reported that the minors' foster mother was concerned about A.G.1's visits with father in jail because A.G.1 was giving father his allowance and contacting people and doing things at father's request. The report stated that the visits were not appropriate or healthy for A.G.1. The department also reported that the Men's Central Jail did not offer the court-ordered parenting class or individual counseling, only "religious counseling (Mass)," in which father did not participate, and mental health services, which required a mental health assessment that father had not received despite the social worker's requests to the jail for such an assessment. Father was only receiving medical treatment for his right leg, which had been amputated due to diabetes. The report indicated the social worker had maintained either written or face-to-face contact with father at least once a month. The department recommended that father's reunification services be terminated.

Father was not present at the June 2, 2008 six-month review hearing. His attorney had no objection to the minors being placed with mother. The court released the minors to mother's home under the department's supervision and ordered the department to provide family maintenance services. A section 364 review hearing was set in November. Because father contested the termination of his reunification services, the six-month review hearing as to father was continued to July 3, 2008.

For the continued hearing, the department submitted the social worker's service log, which indicated that father told the social worker on December 28, 2007 that he was willing to comply with his case plan and that he was aware there was some kind of three-month program available at the jail, but he did not know how to enroll. The social worker responded that such a short program would probably be insufficient, but that he would inquire. On January 2, 2008, the social worker contacted the jail and was told that domestic violence counseling and drug counseling services were offered through the "MERIT program." The social worker left a message with another deputy to inquire about the program, but apparently never heard back. Also on January 2, 2008, father

called the social worker stating that he had learned there was a drug program available in Long Beach and that he would need to be transferred. The social worker called the jail to inquire and spoke to Sister Patricia, who described the religious services. The social worker also called the medical liaison at the jail, but there was no answer.

The department also reported that father was convicted of attempted first degree murder and sentenced to 10 years in prison. Father was transferred to Delano State Prison on May 21, 2008 for processing and was to be transferred to another facility for housing. The social worker contacted father's counselor at the prison and was informed that none of the court-ordered services were available to him.

Father was present in custody at the continued six-month hearing on July 3, 2008. The parties stipulated that father would offer the following testimony if called to testify: His sentence had been reduced from 10 years to seven years then to two years and that he would be released in four months due to good time/work time credit. The department's attorney argued that despite father's stipulated testimony, father's most recent criminal record, dated June 19, 2008, showed a 10-year sentence. The minors' attorney also doubted that father would be released so soon from custody on such a serious crime, but asked for further reunification services in the event that he was released in a few months. Father's attorney argued that father was entitled to 12 months of reunification services and that "there [was] a question whether reasonable services have been provided to the father." The court terminated father's reunification services. The court found that father was not in compliance with the case plan "in part because of his incarceration," but also because it was not clear that he was making any efforts to do any part of the case plan while in custody. The court noted that the minors were home with mother and believed that any further reunification services for father would be discretionary. The court also found there was no likelihood or probability that the minors would be returned to father by the next court date. This appeal followed.[2]

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[2] In juvenile dependency matters, all orders starting with the dispositional order are directly appealable, with the exception of an order setting a section 366.26 hearing. (*In re Daniel K.* (1998) 61 Cal.App.4th 661, 666–668.)

DISCUSSION

Father contends that the trial court erred when it terminated his reunification services at the six-month review hearing because this was not the rare case justifying early termination of services and he was not provided with reasonable reunification services while incarcerated.

I. Motion to Dismiss Appeal as to A.G.2.

We first address the department's motion to dismiss the appeal as to A.G.2 on the ground that it has become moot in light of the juvenile court's subsequent order terminating jurisdiction over A.G.2.[3]

It is well established that an appellate court will not review questions which are moot and that "[a] question becomes moot when, pending an appeal from a judgment of a trial court, events transpire which prevent the appellate court from granting any effectual relief." (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566.) "[T]he question of mootness must be decided on a case-by-case basis." (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.)

In *In re Michelle M.* (1992) 8 Cal.App.4th 326, the appellant appealed from the juvenile court's jurisdictional and dispositional orders finding his daughter a dependent child, placing her in the mother's custody and ordering that he have no contact with her. Pending the appeal, the juvenile court terminated its jurisdiction over the minor and transferred its custody and visitation order to the superior court. The appellant did not appeal the termination of jurisdiction, and the order became final. (*Id*. at p. 328.) The appellate court concluded that it had no jurisdiction over the appeal because there was no longer any ongoing dependency proceeding. (*Id*. at p. 329.)

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[3] We grant the department's request to take judicial notice of the juvenile court's November 17, 2008 order terminating jurisdiction as to A.G.2 with a family law custody order in place.

Similarly here, because father has not appealed from the order terminating jurisdiction over A.G.2, that order has become final. Thus, even if we were to find that the juvenile court erred in terminating father's reunification services at the six-month hearing, there would be no further action the juvenile court could take with respect to A.G.2. Moreover, father has not opposed the motion to dismiss nor presented any arguments as to how the court's order with respect to A.G.2 might affect subsequent orders of the juvenile court with respect to A.G.1. In any event, because we conclude that the juvenile court did not err in terminating father's reunification services, the outcome is the same whether the motion to dismiss had been filed or not. The motion to dismiss is granted.

II. No Error in Termination of Reunification Services.

A. Reunification Services and Review Hearings

Section 361.5 governs the provision of reunification services. Subdivision (a) of section 361.5 provides that "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians."[4] At the time father's reunification services were terminated in 2008, the statute provided that for a child three years of age or older on the date of initial removal from a parent's custody, "court-ordered services shall not exceed a period of 12 months from the date the child entered foster care . . . ." (§ 361.5, subd. (a)(1).)[5] For a child under the age of three

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[4] The statute provides numerous exceptions to this rule. For instance, reunification services need not be provided where the court finds by clear and convincing evidence that a parent has been convicted of a violent felony as described in Penal Code section 667.5. (§ 361.5, subd. (b)(12).) Penal Code section 667.5, subdivision (c)(12) defines attempted murder as a violent felony.

[5] Effective January 1, 2009, the statute was amended to state that such services shall be provided "unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(A).) The department concedes that we must decide this case under

years, "court-ordered services shall not exceed a period of six months from the date the child entered foster care." (§ 361.5, subd. (a)(2).)

The status of every dependent child in foster care shall be reviewed by the juvenile court no less than once every six months. (§ 366, subd. (a)(1).) Such hearings shall be conducted pursuant to section 366.21. Subdivision (e) of section 366.21, which governs the first six-month hearing, requires the juvenile court to order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds that doing so would create a substantial risk of detriment to the child. If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable reunification services have been provided or offered to the parent or legal guardian and the court shall order that those services be "initiated, continued, or terminated." (§ 366.21, subd. (e).) When a juvenile court has assumed jurisdiction over a child but the child is not removed from the physical custody of his or her parent or legal guardian, review hearings are also conducted no less than once every six months, but they are conducted pursuant to section 364 instead of section 366.21. (*In re N.S.* (2002) 97 Cal.App.4th 167, 172; *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1449, fn. 4.) At the review hearings under section 364, the court must determine whether continued supervision by the court is necessary. (§ 364, subd. (c).)[6]

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the statute in effect at the time of ruling. (*In re A.C.* (2008) 169 Cal.App.4th 636, 642, fn. 6.)

[6] Father argues that his contested six-month hearing, which was held a month after the initial six-month hearing in which the minors were returned to mother's home, was actually inappropriately conducted by the juvenile court pursuant to section 364, rather than section 366.21. He seems to be arguing that the error was not harmless based on comments by the juvenile court that it believed it could not terminate father's reunification services early under section 366.21, subdivision (e). But we conclude that the court had the discretion to do so. Moreover, to the extent father claims the juvenile court erred in conducting two section 366.21, subdivision (e) review hearings, he has forfeited this issue by failing to object to the procedure below. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 590.)

B. Return of Minors to Custodial Parent

Father's reunification services were terminated after the minors were returned to mother at the initial six-month review hearing. The department acknowledges there is no statute specifically addressing the juvenile court's authority to terminate reunification services for one custodial parent when a child is returned to the other custodial parent at the six-month hearing. But the department analogizes to section 361.2, which provides that if the court removes a child from a custodial parent's home and places the child with a formerly noncustodial parent, the court has discretion whether to order reunification services for the parent who has lost custody. (§ 361.2, subd. (b)(3); *In re Erika W.* (1994) 28 Cal.App.4th 470, 474–476; see also *In re Janee W., supra,* 140 Cal.App.4th at pp. 1453–1455 [when a child is placed in the custody of a formerly noncustodial parent at the six-month review hearing, the juvenile court has discretion to terminate the formerly custodial parent's reunification services and to terminate jurisdiction pursuant to section 361.2].)

The department argues there is no logical reason to differentiate between custodial and noncustodial parents in these circumstances. We agree. (See *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 57 ["the juvenile court is not required to distinguish between a custodial and noncustodial parent when ordering or bypassing reunification services for a child in out-of-home placement"].) The focus of dependency proceedings at the beginning of a case "is to reunify the child with *a parent*, when safe to do so for the child." (*Id*. at p. 59.) When the child is returned to a parent, that goal has been met. Once the child has reunited with a parent, the juvenile court can immediately terminate jurisdiction and issue custody orders. (§ 364, subd. (c); *In re Natasha A.* (1996) 42 Cal.App.4th 28, 35.) Moreover, reunification services under section 361.5 are only applicable to children in foster care, as shown by the running of the reunification services time frame from the time "the child entered foster care." We therefore agree with the department that once a child has reunited with a parent, the juvenile court has discretion to terminate the other parent's reunification services. Even if this were not the case, we

find that the circumstances here support the court's early termination of father's reunification services.

C. Circumstances Supporting Early Termination

In *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, the reviewing court held that "the juvenile court has the discretion to terminate the reunification services of a parent at any time after it has ordered them, depending on the circumstances presented." (*Id*. at p. 1242.) Drawing on the language of former section 361.5, subdivision (a)(2) that services "may not exceed" six months for a child under the age of three, the court concluded that a parent was "not *entitled* to a prescribed minimum period of services." (*In re Aryanna C.*, *supra*, at p. 1243.) The court further noted that reunification services constitute a benefit and that there is no constitutional entitlement to such services. (*Id*. at p. 1242.) "Where, as the record shows in this case, the likelihood of reunification is extremely low [citation], a continuation of the reunification period would waste scarce resources and delay permanency for dependent minors." (*Ibid*.) The *Aryanna C.* court concluded that when faced with the father's "abysmal" record of failure at reunification, including missing virtually all scheduled visits and assessments and twice testing positive for drugs, the juvenile court acted within its discretion by terminating the father's reunification services prior to expiration of the six-month period regarding his children under the age of one. (*Id*. at pp. 1241–1242.)

The court in *In re Derrick S*. (2007) 156 Cal.App.4th 436 found the *Aryanna C.* reasoning persuasive and extended it to dependents over the age of three. The *Derrick S.* court found additional support for the conclusion that there is no absolute right to receive the maximum amount of statutorily fixed services in the language of section 361.5, subdivision (b), which sets forth 15 situations in which a court need not order any reunification services. (*In re Derrick S.*, *supra*, at p. 445.) The court also relied on the language of section 366.21, subdivision (e), which provides that at the six-month review hearing a juvenile court "'shall direct that any reunification services previously ordered shall continue to be offered to the parent . . . pursuant to the time periods set forth in

subdivision (a) of Section 361.5,'" yet also provides that if a child is not returned to a parent, the court shall order that reunification services be "'initiated, continued, or *terminated*.'" (*In re Derrick S.*, *supra,* at p. 446.) The *Derrick S.* court harmonized these seemingly conflicting provisions to mean that ordinarily 12 months of services would be provided for a parent of a dependent child over the age of three, but may be discontinued in the rare case when the likelihood of reunification is extremely low. (*Ibid*.) While the *Derrick S.* court noted that the situations supporting early termination of services would be rare, it recognized that the case before it was such a case. (*Id*. at p. 450.) The mother was a fugitive on the run from law enforcement and had failed to take advantage of any of the services arranged during the prior six months. (*Id*. at p. 447.) Thus, providing additional reunification services would be the equivalent of providing them to an "empty chair." (*Id*. at p. 448.)

Father concedes that under this authority a juvenile court has discretion to terminate reunification services at any time depending on the circumstances of the case, but he argues that his case is distinguishable. He points out that he had visits with his son while he was in jail; he was willing to participate in the court-ordered programs; he had asked the social worker to help him enroll in whatever program the jail offered; and he attended court hearings when the social worker arranged for his transportation from jail. In short, he argues this was not the rare case justifying early termination of services.

We find the evidence here supports the conclusion that the likelihood of reunification was "extremely low." Father had attempted to kill the minors' mother. He had been sentenced to ten years in prison for attempted first degree murder. The minors had already reunified with mother and had been returned to her home. And there was a permanent restraining order in effect until November 2010, ordering father to remain 100 yards away from the minors, except for monitored visits with A.G.1. In the unlikely event that father was released from prison prior to expiration of the 12-month reunification time frame, the restraining order would still be in effect well beyond that period. We find no error in the trial court's termination of father's reunification services at the six-month review hearing.

III. Reasonable Services.

Father also contends that he was not provided with adequate reunification services while he was incarcerated and that his case plan should have been modified. But in light of our conclusion that the trial court had discretion to terminate father's services at the six-month review hearing after the minors were returned to their mother, we need not address the reasonableness of father's services. Section 366.21, subdivision (e), only requires the juvenile court to determine at the six-month hearing whether reasonable services have been provided or offered to a parent "[i]f the child is not returned to his or her parent." See also *In re Janee W.*, *supra*, 140 Cal.App.4th at page 1454, finding that statutory provisions entitling a parent to reasonable services (§ 366.21 & Cal. Rules of Court, rule 5.710(e)(2)) are inapplicable when a child is removed from the custody of one parent and placed with another parent.

DISPOSITION

The order terminating father's reunification services is affirmed. The motion to dismiss the appeal as to A.G.2 is granted.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST